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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,039	11/30/2001	Gary Mitchell	9289-3	6067

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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/998,039

Applicant(s)

MITCHELL ET AL. *CM*

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 10, 12, 24-27, 29, 32-33, and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's prior art admission herein referred to as 'PA1 (Time Machines by Nautilus pgs. A-22). 'PA1 discloses an exercise machine comprising a frame, a seat mounted to the frame, a pair of support pads mounted to the frame being positioned to engage one of the upper arms and elbows of a seated user, and being movable between an extended position in which the user's arms are substantially straight, and a curled position in which the user's arms are bent, the axes of rotation forming an angle of between about 115 and 155 degrees, and a resistance system connected with the movement arm units that provides resistance.
3. Referring to claim 2, 'PA1, shows that the height of the seat can be adjusted. (Holes on vertical member underneath seat suggest adjustability).
4. Referring to claim 3, 'PA1 shows the support pads angled such that a seated user's upper arms would be angled upwardly from the shoulder to the elbow.
5. Referring to claim 4, 'PA1 shows the arms angled upwardly from shoulder to elbow at an angle of more than 5 degrees.

6. Referring to claim 6, 'PA1 shows the support pads positioned so that each of the user's elbows is located on a respective axis of rotation.
7. Referring to claim 10, 'PA1 shows the resistance system comprising a weight stack.
8. Referring to claim 12, 'PA1 shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit.
9. Referring to claim 24, 'PA1 discloses an exercise machine comprising a frame, a seat mounted to the frame, a pair of support pads mounted to the frame being positioned to engage one of the upper arms and elbows of a seated user, and being movable between an extended position in which the user's arms are substantially straight, and a curled position in which the user's arms are bents, the axes of rotation forming an angle of between about 115 and 155 degrees, a weight stack, a first cable connected with the movement arms, a second cable connected with the weight stack, and pulleys.
10. Referring to claim 25, 'PA1 shows the seat being configured so that the elevation can be adjusted.
11. Referring to claim 26, 'PA 1 shows the support pads angled such that a seated user's upper arms would be angled upwardly from the shoulder to the elbow.
12. Referring to claim 27, 'PA1 shows the arms angled upwardly from shoulder to elbow at an angle of more than 5 degrees.

13. Referring to claim 29, 'PA1 shows support pads positioned so that each of the user's elbows is located on a respective axis of rotation.

14. Referring to claim 32, 'PA1 shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit.

15. Referring to claim 33, 'PA1 discloses an exercise machine comprising a frame, a seat mounted to the frame, a pair of support pads mounted to the frame being positioned to engage one of the upper arms and elbows of a seated user, and being movable between an extended position in which the user's arms are substantially straight, and a curled position in which the user's arms are bent, a resistance system connected with the movement arm units that provides resistance, wherein the elevation of the seat and the support pads are such that when a user is seated and the user's elbows or upper arms engage the support pads, the user's upper arms are angled upwardly from shoulder to elbow at an angle greater than 5 degrees.

16. Referring to claim 35, 'PA1 shows support pads positioned so that each of the user's elbows are located on a respective axis of rotation.

17. Referring to claim 36, 'PA1 discloses resistance system comprising a weight stack.

18. Referring to claim 37, 'PA1 discloses the movement arm unit comprising a cam wherein the resistance system includes a belt attached to and engaging each cam.

(See a-22).

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19. Referring to claim 38, 'PA1 shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit.

***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 5, 7-9, 11, 28, 30, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's prior art admission hereinafter referred to as 'PA1.

22. Referring to claims 5, 28, and 34, 'PA1 discloses an exercise machine inherently having a backrest (preventing user from falling backwards). The specific angle at which the backrest lies with respect to the underlying surface is unclear from the pictures.

However, the specific angle chosen would be a matter of obvious design choice to the skilled artisan at the time of invention, as a variety of angles could be chosen based on user comfort and it is well known and common in the art to have exercise devices with backrests that lie at a 90 degree angle with respect to the underlying surface.

23. Referring to claims 7 and 30, 'PA1 discloses the claimed invention except for the specific angle formed by the axes of rotation. The specific angle, or range of angles would be a matter of obvious design choice within the knowledge of one with ordinary

skill in the art, since the skilled artisan would choose a range of angles depending on the specific areas of the bicep that were to be exercised.

24. Claims 8-9, 11, 13-23 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over 'PA1 in view of Jones (U.S. Patent No. 5,181,896). Referring to claims 8, 13, and 31, 'PA1, discloses an exercise machine including a frame, a seat, a pair of pads to engage the upper arms, a pair of movement arm units, and a resistance system. 'PA1 lacks pairs of front and rear uprights rising from respective legs. Jones discloses an exercise device including front and rear uprights (see fig. 1). It would have been obvious to one having ordinary skill in the art at the time of invention to provide 'PA1 with front and rear uprights as taught by Jones in order to provide more stability to the exercise device, thereby preventing any extraneous movement of the machine during exercise. Furthermore, the feature of having the vertical planes define angles between 20 and 70 degrees is a matter of obvious design choice within the knowledge of one with ordinary skill in the art, since the skilled artisan would choose an appropriate angle depending on which portion of muscle the user wanted the exercise to concentrate on.

25. Referring to claim 9 and 14, the feature of having the generally vertical planes define an angle between about 35 and 45 degrees is a matter of obvious design choice within the knowledge of one with ordinary skill in the art. (See above paragraph).

26. Referring to claim 11, 'PA1, as modified by Jones above, discloses the movement arm comprising a cam, and wherein the resistance system includes a belt attached to the cam.

27. Referring to claim 15, 'PA1 as modified by Jones above, discloses the claimed invention except for the specific angle formed by the axes of rotation. The specific angle, or range of angles would be a matter of obvious design choice within the knowledge of one with ordinary skill in the art, since the skilled artisan would choose a range of angles depending on the specific areas of the bicep that were to be exercised.
28. Referring to claim 16, 'PA1, shows that the height of the seat can be adjusted. (Holes on vertical member underneath seat suggest adjustability).
29. Referring to claim 17, 'PA1 shows the support pads angled such that a seated user's upper arms would be angled upwardly from the shoulder to the elbow. (See a-22)
30. Referring to claim 18, 'PA1 shows the arms angled upwardly from shoulder to elbow at an angle of more than 5 degrees. (See a-22).
31. Referring to claim 19, 'PA1 discloses an exercise machine inherently having a backrest (preventing user from falling backwards). The specific angle at which the backrest lies with respect to the underlying surface is unclear from the pictures. However, the specific angle chosen would be a matter of obvious design choice to the skilled artisan at the time of invention, as a variety of angles could be chosen based on user comfort and it is well known and common in the art to have exercise devices with backrests that lie at a 90 degree angle with respect to the underlying surface. (See a-22)
32. Referring to claim 20, 'PA1, as modified by Jones discloses pads positioned to intersect with a respective axis of rotation.



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33. Referring to claim 21, 'PA1, as modified by Jones discloses a resistance system comprising a weight stack. (See a-22)
34. Referring to claim 22, 'PA1, as modified by Jones, discloses the movement arm comprising a cam, and wherein the resistance system includes a belt attached to the cam.
35. Referring to claim 23, 'PA1 as modified by Jones, shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit. (See a-22)

### ***Conclusion***

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jones                      U.S. Patent No. 5,273,504

Simonson                U.S. Patent No. 5,667,464

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



**NICHOLAS D. LUCCHESI**  
**SUPERVISORY PATENT EXAMINER**  
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December 8, 2002